

- 9 -

REMARKS

The Examiner has objected to the drawings. Specifically, the Examiner has stated that Figure 2 should be designated as prior art. Applicant has amended the drawings to avoid such objection.

The Examiner has rejected Claims 1-2 and 5-7 under 35 U.S.C. 102(b) as being anticipated by Cozza (U.S. Patent No. 5,502,815). The Examiner has further rejected Claims 3 and 4 under 35 U.S.C. 103(a) as being unpatentable over Cozza. The Examiner has even still rejected Claims 8-30 under 35 U.S.C. 103(a) as being unpatentable over Cozza in view of DeWitt et al. (U.S. Patent No. 5,577,224). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims.

With respect to each of the independent claims, applicant has amended such claims to substantially incorporate the following claim language:

“wherein the data is read and scanned by executing a first thread of operation for reading the data and a second thread of operation for scanning the data; wherein the first thread of operation is executed in parallel with the second thread such that, while a first portion of the data is being scanned, a second portion of the data to be scanned is being read and cached, so that, when a scanner is available for scanning the second portion of the data, a delay associated with reading the second portion of the data is avoided” (see this or similar, but not identical language in each of the independent claims).

Applicant respectfully asserts that Cozza, and all of the other references relied on by the Examiner, do not teach that “the first thread of operation is executed in parallel with the second thread” in the specific context presently claimed by applicant. In fact, Cozza simply teaches that “the cache is searched for the presence of the file’s cache information” and “[i]f the file’s information is not found...then it is scanned” (see Col. 4,

- 10 -

lines 17-28 from Cozza). Thus, Cozza does not teach that "while a first portion of the data is being scanned, a second portion of the data to be scanned is being read and cached, so that, when a scanner is available for scanning the second portion of the data, a delay associated with reading the second portion of the data is avoided," as presently claimed by applicant.

With respect to the 102 rejection, the Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. Applicant respectfully asserts that this criterion has simply not been met by the Cozza reference, especially in view of the amendments made hereinabove to each of the independent claims.

With respect to the 103 rejection, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991). Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

- 11 -

Thus, a notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claims 3 and 4 et al., the Examiner has relied on Col. 4, lines 17-29 in Cozza to make a prior art showing of applicant's claimed techniques "wherein if it is determined that the data does not have the associated file access pattern, the data is read and the virus scan is performed, after which it is determined whether the virus scan was slower than a predetermined amount" (Claim 3) and "wherein the file access pattern is conditionally generated based on whether the virus scan was slower than the predetermined amount" (Claim 4). The Examiner has also given official notice "that not storing an access pattern that provides for a decrease in system performance is logical and as such would not be provided for within any such system."

Applicant respectfully asserts that such excerpt does not teach any sort of determining "whether the virus scan was slower than a predetermined amount," and especially not a "file access pattern [being] conditionally generated based on whether the virus scan was slower than the predetermined amount," as specifically claimed by applicant. In response to the Examiner's official notice, applicant asserts that Cozza discloses that "[i]f the file's information is not found (indicating that the file needs to be freshly scanned), then it is scanned for a full complement of viruses" (see Col. 4, lines 22-28). Thus, not storing an access pattern would not be logical, as argued by the Examiner, because the file in Cozza would be continuously re-scanned even if it was unnecessary.

With respect to Claim 8 et al., the Examiner has relied on the Abstract; item 26 in Figure 1; Col 2, lines 1-2; and Col. 2, lines 10-21 and 25 in DeWitt to make a prior art showing of applicant's claimed technique "wherein the first thread of operation includes...caching the data." Applicant asserts that DeWitt only relates to a method and

- 12 -

system for caching data that improves the efficiency of a cache (see Abstract). However, applicant specifically claims a technique “wherein the first thread of operation includes...caching the data,” (emphasis added) such that the data is cached for scanning (see Claim 7). Clearly, a method for generally caching data does not meet applicant’s specific claim language.

Since the Cozza reference, along with the combination of references relied on by the Examiner, fails to meet applicant’s specific claim language, as noted above, a notice of allowance or a specific prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Still yet, applicant brings to the Examiner’s attention the subject matter of new Claims 31-35 below, which are added for full consideration:

“wherein the file access pattern is stored in a database including a plurality of file access patterns, each of the plurality of file access patterns being associated with a different set of data” (see Claim 31);

“wherein the file access pattern includes a checksum of a file path and a file name” (see Claim 32);

“wherein the data is stored in a cache and the cache is continuously monitored for determining if data is available for scanning” (see Claim 33);

“wherein the file access pattern is not generated if the virus scan was slower than a predetermined amount in order to save space in a file access pattern database” (see Claim 34); and

“wherein the file access pattern is stored in a binary format” (see Claim 35).

- 13 -

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P049/01.250.01).

Respectfully submitted,
Zilka-Kotab PC.

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100